



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2011

Ms. Sharae Bassett and Ms. Judith Rawls
Assistant City Attorneys
City of Beaumont
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2011-16038

Dear Ms. Bassett and Ms. Rawls:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# (434817) ORR 08-40, 08-43, and 08-79).

The City of Beaumont (the "city") received the following requests from different requestors: (1) specified personnel records pertaining to two named police officers;¹ (2) dash camera video and recordings involving a specified arrest; (3) police reports, documents, and mug shots regarding the same arrest; (4) police reports regarding the same arrest; and (5) audio and video dash cam involving the same arrest. The City of Beaumont's Municipal Court (the "court") received a request for a specified motion to withdraw. You state the city has no information responsive to some of the requested personnel documents.² You claim

¹You state, and provide documentation showing, the city received clarification of this request. *See* Gov't Code § 552.222(b)(providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

that the remaining requested information is excepted from disclosure under sections 552.103, 552.107(2), and 552.108 of the Government Code. We also understand you to raise section 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.³

Initially, we note the Act is applicable to information “collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body.” Gov’t Code § 552.002(a)(1). However, the Act’s definition of “governmental body” “does not include the judiciary.” *Id.* § 552.003(1)(B). Information “collected, assembled, or maintained by or for the judiciary” is not subject to the Act but instead is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov’t Code § 552.003(1)(B) prior to enactment of Gov’t Code § 552.0035). We find the request for the motion to withdraw is a request for information maintained by the court. Accordingly, we conclude that any responsive information maintained by the court is not subject to public disclosure under the Act.⁴

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

³We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

⁴We note that records of the judiciary also may be public under other sources of law. *See* Gov’t Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov’t Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

Gov't Code § 552.022(a)(1). The submitted information contains completed evaluations that are subject to section 552.022(a)(1). The city must release this information, which we have marked, pursuant to section 552.022 unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under other law. *See id.* Therefore, we will consider your argument under section 552.108 of the Government Code. You also claim this information is subject to section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not "other law" that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, the city may not withhold the information subject to section 552.022(a)(1) pursuant to section 552.103 of the Government Code. Section 552.107(2) allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). However, section 552.022(b) provides:

(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is expressly made confidential under other law.

Gov't Code § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, we conclude the city may not withhold the information subject to section 552.022 pursuant to section 552.107(2). However, we will consider your arguments under sections 552.103 and 552.107(2) for the information not subject to section 552.022. We also note section 552.101 is considered "other law" for purposes of section 552.022. Therefore, we will also consider the applicability of this exception.

We now turn to your arguments under section 552.107(2) of the Government Code for the information not subject to section 552.022. You assert that the city is prohibited from releasing the information at issue pursuant to a court order. As noted above, section 552.107(2) excepts information from disclosure if "a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). We note you have submitted a court order that provides in pertinent part:

The court has . . . determined that during the course of discovery . . . certain documents, papers, books, accounts, letters, photographs, videos, recordings, objects or tangible things may be produced bearing on the matters at issue. The court hereby ORDERS the parties to refrain from making public, disclosing, discussing or producing copies of any such evidence that is

produced in discovery or which may be expected to be presented at trial. The court further ORDERS the parties to refrain from commenting on the absence of such evidence. This ORDER is effective immediately and . . . shall remain in effect for 30 days after the conclusion of this matter at the trial court level.

First Amended Order Regarding Extrajudicial Statements, *State of Texas v. Kendrick Ledale Perkins*, cause number T11002554-A-B, (Beaumont Mun. Ct., Jefferson County, Tex., August 19, 2011). You state the information at issue is subject to this order. Accordingly, based on your representations and our review, we conclude that the city must withhold the information that is not subject to section 552.022 under section 552.107(2) of the Government Code.

We now turn to your argument under section 552.108 of the Government Code for the information subject to section 552.022. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). As a general rule, section 552.108 is not applicable to a law enforcement agency’s personnel records. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) not applicable to documents obtained by police constable for purpose of evaluating applicant’s fitness for employment), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 562 at 10 (1990) (predecessor to section 552.108(b) not applicable to employment information in police officer’s file). In this instance, however, we understand you to contend that the information at issue is related to the criminal case pending in the municipal court. Accordingly, we conclude that release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Therefore, the city may withhold the information subject to section 552.022 under section 552.108(a)(1) of the Government Code.

In summary, we conclude that any responsive information maintained by the court is not subject to public disclosure under the Act. The city must withhold the information that is not subject to section 552.022 of the Government Code under section 552.107(2) of the

Government Code. The city may withhold the information that is subject to section 552.022 under section 552.108(a)(1) of the Government Code.⁵

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 434817

Enc. Submitted documents

c: Requestors
(w/o enclosures)

⁵As our ruling is dispositive, we need not address your remaining arguments.